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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Loretta Greer,)
9 Petitioner,)
10 v.) CIV 04-1265 PHX JAT (VAM)
11 Attorney General, et al.,) ORDER
12)
13 Respondents.)

14 Pending before the Court is petitioner's Motion for an
15 Evidentiary Hearing. (Doc. 165).

16 Petitioner seeks an evidentiary hearing. 28 U.S.C. § 2254(e)
17 severely restricts a court's discretion to grant an evidentiary
18 hearing. Baja v. Ducharme, 187 F.3d 1075, 1077 (9th Cir. 1999).
19 The statute imposes "an express limitation on the power of a
20 federal court to grant an evidentiary hearing .. and [has] reduced
21 considerably the degree of a district court's discretion." Baja,
22 187 F.3d at 1078 (quoting Cardwell v. Greene, 152 F.3d 331, 336
23 (4th Cir.), cert. denied, 119 S.Ct. 587 (1998). Section
24 2254(e)(2) provides, in pertinent part:

25 If the applicant has failed to develop the factual basis
26 of a claim in State court proceedings, the court shall
not hold an evidentiary hearing on the claim unless the
applicant shows that

27 (A) the claim relies on
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(i) a new rule of constitutional law; made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

An exception to these requirements exists if a petitioner demonstrates he attempted to develop a factual basis for a claim in state court but was denied the opportunity to do so by the state court. Baja, 187 F.3d at 1078.

The motion submitted by petitioner is confusing and incoherent. Petitioner does not state with any clarity how the grievances outlined in her motion relate to her claims for habeas relief. In addition, she does not indicate, let alone demonstrate that she attempted to develop the factual basis for the issues in state court but was denied the opportunity to do so. For all these reasons, the motion for an evidentiary hearing will be denied without prejudice.

IT IS THEREFORE ORDERED that petitioner's Motion for an Evidentiary Hearing (Doc. 165) is denied without prejudice.

DATED this 8th of November, 2005.

Virginia A. Mathis
Virginia A. Mathis
United States Magistrate Judge